SIVARAMAN NAIR

v.

MENTERI DALAM NEGERI MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AUGUSTINE PAUL J
[CRIMINAL APPLICATION NO: 44-23-2000]
19 JULY 2000

CRIMINAL LAW: *Drug Dependants (Treatment and Rehabilitation) Act 1983 - Sections 6(1)(a), 12 & 21(1) - Period of residence at rehabilitation centre - Computation thereof - Escape from centre - Whether period during which treatment not received ought to be taken into account - Whether such period must be added to two-year period of treatment - Whether period of treatment may be shortened - Period of imprisonment during currency of an order under s. 6(1)(a) - Whether such period deemed part of treatment period*

CRIMINAL PROCEDURE: *Habeas corpus - Detention of drug addict - Two-year treatment order expired but detainee did not receive treatment for two years - Whether period during which treatment not received ought to be taken into account - Whether such period must be added to two-year period of treatment - Whether unlawful to continue to detain detainee - Whether treatment for any unexpired part of two-year period ought to be ordered*

This was an application for a writ of *habeas corpus*. The applicant was ordered to undergo treatment at the Pusat Serenti Tampin ('the pusat') for a period of two years under s. 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act') commencing from 22 September 1997. On 10 November 1997, the applicant escaped and it was only on 25 August 1999 that the applicant was produced before the Magistrate to answer the charge against him. He pleaded guilty and was sentenced to ten months' imprisonment. Upon his release on 15 March 2000, the applicant was sent to the pusat to serve the remainder of the period of treatment. The applicant argued that since the two-year treatment order imposed on him would have expired on 21 September 1999, his continued detention was unlawful.

Held:

[1] In determining whether the two-year period of treatment must take into account any period during which a person did not receive any treatment, the paramount factor for consideration is the object of the Act. A statute must be interpreted in such a way as to promote its object and this is statutorily recognised by s. 17A of the Interpretation Act 1967. The object of the Act, and in particular s. 6(1)(a) of the Act, is to prescribe a specified period considered necessary and essential for the treatment and rehabilitation of a drug dependant.

[2] The period of treatment can be shortened only as authorised by s. 12 of the Act. There is no other permissible way of shortening the period of treatment. Any interpretation that does not take into account that part of a period during which a person does not receive treatment as ordered will therefore defeat the object of the Act. The result is that a period of absence from the rehabilitation centre cannot be treated as part of the treatment for the simple reason that no treatment was received during that period. Thus, a person whose period of treatment is shortened by reason of his absence from a rehabilitation centre for an unauthorised purpose must make up for the loss in order to satisfy the requirement of the Act to receive treatment for a period of two years. Therefore, the period during which the applicant had escaped from the pusat must be added to the original two-year period of treatment ordered to ensure that he would receive treatment for two years.

[3] The effect of a term of imprisonment served by a person against whom an order under s. 6(1)(a) of the Act has been made is governed by s. 21(1) of the Act which applies to a person who has been sentenced to a term of imprisonment during the currency of, *inter alia*, an order under s. 6(1)(a) of the Act. The time of commission of the offence is irrelevant. The sentence imposed on the applicant must be deemed to be part of the treatment period that he had been ordered to undergo and upon completion of the sentence of imprisonment he must receive treatment for any unexpired part thereof.

[Detention of applicant lawful; motion dismissed.]

Legislation referred to:

Criminal Procedure Code, s. 282(d)

Drug Dependants (Treatment and Rehabilitation) Act 1983, ss. 6(1)(a), 12, 19(3), 21(1)

Interpretation Acts 1948 & 1967, s. 17A

For the applicant - T Vijayandran; M/s T Vijay & Co
For the respondents - Kamaludin Md Said SFC

Reported by S Dharmendran

JUDGMENT

Augustine Paul J:

The dominant issue for determination in the motion before me for a writ of *habeas corpus* is the manner of computing the period of treatment under s. 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ("the Act") when the person against whom such an order has been made does not serve part of the period during its currency.

Sivaraman Nair ("the applicant") was arrested by the police on 9 September 1997 on suspicion of being a drug dependant. On 22 September 1997 he was produced before the magistrate at the Magistrate's Court, Jalan Raja, Kuala Lumpur for an order under s. 6(1)(a) of the Act. The learned magistrate, upon a perusal of the medical report and the report of the Rehabilitation Officer as required, ordered the applicant to undergo treatment at the Pusat Serenti Tampin ("the pusat") for a period of two years under s. 6(1)(a) of the Act. The applicant duly commenced his period of treatment. On 10 November 1997 he escaped from the pusat. Four days later he was arrested and was charged before the magistrate at the Magistrate's Court, Alor Gajah for an offence under s. 19(3) of the Act. He was then released on bail but he breached the terms of the bail bond and disappeared. On 25 August 1999 he was arrested and was produced before the magistrate to answer the charge preferred against him. He pleaded guilty to the charge and was sentenced to ten months' imprisonment. The applicant served his prison term and was released from jail on 15 March 2000. However, he was sent to the pusat to serve the remainder of the period of treatment.

The applicant has now moved the court for a writ of *habeas corpus* on the ground that the two-year treatment order imposed on him has since expired and that his continued detention is unlawful. The order made against the applicant on 22 September 1997 would have expired on 21 September 1999. During the period of the order the applicant had received treatment only from 22 September 1997 to 10 November 1997, that is to say, for a period of about one and half months. It will therefore be observed that the applicant did not serve the two-year treatment period fully as he had escaped from the pusat for a major part of the period and was serving part of a jail-term for the remaining period. In order to determine whether the continued detention of the applicant is unlawful what requires

consideration is the manner of accounting for any period or periods during which a person fails to receive treatment as ordered by virtue of being away from the rehabilitation centre.

In resolving this issue it must be noted that s. 6(1)(a) of the Act refers to an order "... for a period of two years …". What requires determination is whether the words that I have emphasised contemplate treatment for a full two-year period thus taking into account any period during which a person did not receive treatment or whether the words refer to a period of two years commencing from the date of the making of the order and terminating at the end of the period even if a person did not receive treatment for part of the period. The first observation to be made is that an order made under s. 6(1)(a) of the Act need not commence with effect from the date of making the order. It can commence at a later date as made evident by s. 21(1) of the Act which by its reference to a person who "... has not yet commenced to undergo the same ..." contemplates such an intention. Though the period of treatment can therefore commence at a later date it must be for a period of two years as stated in s. 6(1)(a) of the Act. In determining whether the two-year period of treatment must take into account any period during which a person did not receive any treatment the paramount factor for consideration is the object of the Act. A statute must be interpreted in such a way as to promote its object. This is statutorily recognised by s. 17A of the Interpretation Act 1967 which reads as follows:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

The object of the Act as demonstrated by its long title is as follows:

> An Act to provide for the treatment and rehabilitation of drug dependants and for matters connected therewith.

The object of the Act, and in particular s. 6(1)(a) of the Act, is therefore to prescribe a specified period considered necessary and essential for the treatment and rehabilitation of a drug dependant. The period of treatment can be shortened only as authorised by s. 12 of the Act which reads as follows:

> (1) The Director-General may shorten the period of residence at any Rehabilitation Centre in respect of any person for reasons which appear to him to be sufficient if such person has already completed a period of twelve months of residence in such Centre.

> (2) The Director-General may, with the consent in writing of the Minister, discharge from a Rehabilitation Centre a person who has not yet completed a period of twelve months of residence at the Centre for special reasons pertaining to the welfare of such person.

It follows that there is no other permissible way of shortening the period of treatment. Any interpretation that does not take into account a part of a period during which a person does not receive treatment as ordered will therefore defeat the object of the Act. The result is that a period of absence from a rehabilitation centre cannot be treated as part of the treatment for the simple reason that no treatment was received during the period. Thus a person whose period of treatment is shortened by reason of his absence from a rehabilitation centre for an unauthorised purpose must make up the loss in order to satisfy the requirement of the Act to receive treatment for a period of two years. Accordingly, a person who has escaped from custody during the two-year period of treatment for a specified duration will have that length of period added to the order made against him. Therefore the period during which the applicant had escaped from the pusat must be added to the original two-year period of treatment ordered to ensure that he receives treatment for two years.

The effect of a term of imprisonment served by a person against whom an order under s. 6(1)(a) of the Act has been made is governed by s. 21(1) of the Act which reads as follows:

> Where a person who is undergoing residence at a Rehabilitation Centre, supervision by an officer or has been ordered to do so but has not yet commenced to undergo the same, is sentenced by any court to any term of imprisonment, or by a Juvenile Court to a term of detention, or is detained under any law relating to preventive detention, such imprisonment or detention shall take precedence over the residence or supervision as aforesaid, and the period of imprisonment or detention served shall be deemed to be residence at a Rehabilitation Centre or supervision, as the case may be, and if upon completion of such period of imprisonment or detention there still remains unexpired any portion of the period for which he had been ordered to reside at a Rehabilitation Centre, or undergo supervision, as the case may be, he shall be required to reside at a Rehabilitation Centre or undergo supervision, as the case may be, for such unexpired portion thereof.

In his submission before me learned counsel for the applicant contended that s. 21(1) of the Act only applies when a person is called upon to answer a charge in respect of an offence committed prior to the making of an order against him under s. 6(1) of the Act. He added that as the term of imprisonment in this case was imposed at a time when the applicant was not undergoing treatment s. 21(1) has no application. With

respect, I am unable to agree with the argument advanced by learned counsel. Section 21(1) of the Act does not in any way refer to the time of commission of the offence. It only refers to the imposition of a sentence of imprisonment in respect of "… a person who is undergoing residence at a Rehabilitation Centre, supervision by an officer or has been ordered to do so but has not yet commenced to undergo the same …". Thus s. 21(1) of the Act applies to a person who has been sentenced to a term of imprisonment during the currency of, *inter alia*, an order under s. 6(1)(a) of the Act. The time of commission of the offence is therefore irrelevant. As the applicant was sentenced on 25 August 1999 it follows that the sentence was imposed on him during the currency of the order made against him as it would expire only on 21 September 1999. This makes it unnecessary to consider the new period of treatment caused by the escape of the applicant from the pusat. Thus the sentence imposed on the applicant must be deemed to be part of the treatment period that he has been ordered to undergo and upon completion of the sentence of imprisonment he must receive treatment for any unexpired part thereof.

The two-year period of treatment of the applicant that commenced on 22 September 1997 was interrupted on 10 November 1997 when he escaped from custody. He must therefore receive treatment for the balance of the two-year period when he commenced treatment on 15 March 2000. This will amount to a period of about one year ten and a half months from that date. The term of imprisonment that he had served from 25 August 1999 to 15 March 2000 shall be treated as part of the period of treatment. This means that the period for which the applicant was imprisoned shall not be used to extend the period of his treatment as in the case of the period during which he had escaped but, on the other hand, shall be deducted from the period for which he has to receive treatment now. It will therefore be noticed that s. 21(1) of the Act works to the advantage of the applicant. Learned counsel's argument that sending the applicant for further treatment now may not serve any purpose as he may no longer be a drug dependant is a matter for consideration by the relevant authorities under s. 12 of the Act. I pause to suggest that s. 21(1) of the Act may require to be reviewed by the relevant authorities. The treatment of a term of imprisonment as taking precedence over an order made under s. 6(1)(a) of the Act may defeat the object of rehabilitating a drug dependant. Thus it may be more appropriate to give precedence to an order made under s. 6(1)(a) of the Act. The term of imprisonment can be made to take effect from the expiry of the period of treatment pursuant to s. 282(d) of the Criminal Procedure Code.

In the circumstances the detention of the applicant is lawful and I dismissed his motion.